

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In the Matter of )  
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GTE Telephone Operating Cos. )

GTOC Tariff No. 10 )

GTOC Transmittal No. 1148 )  
\_\_\_\_\_

CC Docket No. 98-79

**COMMENTS OF THE  
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association,<sup>1</sup> through undersigned counsel and pursuant to Section 1.106(g) of the Commission's Rules, 47 C.F.R. 1.106(g), hereby submits its comments in support of the Petition for Reconsideration filed by MCI WorldCom, Inc. ("MCI") in the captioned docket on November 30, 1998. In its Petition, MCI urges the Commission, among other things, to reconsider its finding that an "offering which permits Internet Service Providers (ISPs) to provide their end user customers with high-speed access to the Internet is an interstate service . . . properly tariffed at the federal level."<sup>2</sup>

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<sup>1</sup> A national trade association, TRA represents nearly 800 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. TRA is the largest association of competitive carriers in the United States, numbering among its members not only the large majority of providers of domestic interexchange and international services, but the majority of competitive local exchange carriers.

<sup>2</sup> Memorandum Opinion and Order, CC Docket No. 98-79, FCC 98-292, ¶ 1 (Oct. 30, 1998).

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In its *Memorandum Opinion and Order* ("MO&O"), the Commission relies upon a traditional jurisdictional analysis to determine whether GTE's DSL Solutions-ADSL service offering is jurisdictionally interstate or local in nature. Accordingly, the Commission recites that it has "traditionally . . . determined the jurisdictional nature of communications by the end points of the communications and [has] consistently . . . rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers."<sup>3</sup> The Commission relies upon its decision in *Teleconnect Company v. The Bell Telephone Company of Pennsylvania, et al.*, in emphasizing that "an interstate communication does not end at an intermediate switch . . . [but] extends from the inception of a call to its completion, regardless of any intermediate facilities."<sup>4</sup> By way of further illustration, the Commission refers to its decision in *Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation* to confirm that "traffic that consisted of an incoming interstate transmission (call) to the switch serving a voice mail subscriber and an intrastate transmission of that message from that switch to the voice mail apparatus"<sup>5</sup> constitutes "a continuous path of communications across state lines between the caller and the voice mail service."<sup>6</sup>

Extrapolating from the above analysis, the Commission reasons that calls placed by an end user using GTE's DSL Solutions-ADSL service "do not terminate at the ISP's local server, . . . but continue to the ultimate destination or destinations, very often at a distant Internet website

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<sup>3</sup> Id. at § 17.

<sup>4</sup> 10 FCC Rcd. 1626, ¶ 12 (1995).

<sup>5</sup> MO&O, CC Docket No. 98-79, FCC 98-292 at ¶ 17.

<sup>6</sup> 7 FCC Rcd. 1619, ¶ 9 (1992).

accessed by the end user."<sup>7</sup> In so concluding, however, the Commission has attempted to drive a square peg into a round hole. As a result, the conclusion thereby reached by the Commission is inapposite.

As the Commission acknowledges, "[a]n Internet communication does not necessarily have a point of 'termination' in the traditional sense."<sup>8</sup> The Commission then goes on to explain that "[i]n a single Internet communication, an Internet user may, for example, access websites that reside on servers in various states or foreign countries, communicate directly with another Internet user, or chat on-line with a group of Internet users located in the same local exchange or in another country, and may do so either sequentially or simultaneously."<sup>9</sup> Indeed, every time an end user conducts an Internet search, it is querying (and hence communicating with) multiple databases in multiple locations.

Accordingly, in an Internet transaction, there is often no "end-to-end communication"<sup>10</sup> with a distant database. In fact, in an Internet session such as that described by the Commission above, the "websites that reside on servers in various state or foreign countries"<sup>11</sup> look more like "intermediate points of switching"<sup>12</sup> than they do like end points. If indeed the

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<sup>7</sup> MO&O, CC Docket No. 98-79, FCC 98-292 at ¶ 19.

<sup>8</sup> Id. at ¶ 22.

<sup>9</sup> Id.

<sup>10</sup> Southwester Bell Telephone Company Transmittal Nos. 1537 and 1560 Revisions to Tariff F.C.C. No. 68, 3 FCC Rcd. 2339, ¶ 28 (1988).

<sup>11</sup> MO&O, CC Docket No. 98-79, FCC 98-292 at ¶ 22.

<sup>12</sup> Id. at ¶ 17.

dispositive consideration is the "continuous path of communications,"<sup>13</sup> the end point of an Internet call would appear to be the server initially contacted by the end user to initiate his or her session. After all, the last, or one of the last, screens that the end user will see as he or she terminates his or her session is generated by that server, rendering the final contact with the server the equivalent of a completed "call" in the Commission's analogy.

In attempting to address this problem, the Commission repeats the awkward exercise associated with the introduction of square pegs into round holes. The Commission applies the "contamination theory" it uses to determine the jurisdictional nature of "mixed-use" special access lines in an effort to resolve the jurisdictional complication created by a "continuous path of communications" that traverses multiple servers in multiple locations in any given Internet transaction. As described by the Commission, "special access lines carrying more than *de minimis* amounts of interstate traffic to private line systems . . . [are] assigned to the interstate jurisdiction . . . [and] interstate traffic is deemed *de minimis* when it amounts to ten percent or less of the total traffic on a special access lines."<sup>14</sup> The contamination theory, however, was intended to deal with multiple point to point communications the jurisdictional character of each of which is clear. Confirming this view, the Commission empowered local exchange carriers to "require usage information for purposes of verification" in the event that "customer representations . . . appear[ed] questionable."<sup>15</sup>

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<sup>13</sup> Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation, 7 FCC Rcd. 1619 at ¶ 9.

<sup>14</sup> MO&O, CC Docket No. 98-79, FCC 98-292 at ¶ 23.

<sup>15</sup> MTS and WATS Market Structure, 4 FCC Rcd. 5660, ¶ 3, fn. 5 (1989).

TRA submits that the above analysis confirms that the unique nature of the Internet precludes use of traditional tools in assessing the jurisdictional character of services such as GTE's DSL Solutions-ADSL service. There is often no traditional end-to-end communication in an Internet transaction, hence a jurisdictional assessment that requires such a communication is of no analytical value. And given that the jurisdictional nature of an Internet communication often cannot be determined, contamination theories offer little assistance in determining the jurisdictional character of a service used to access the Internet.

In circumstances where old tools don't work, it is generally advisable to take a step back and evaluate alternative approaches rather than trying to shoehorn new technologies into existing paradigms. The determination of the jurisdictional nature of Internet access implicates a number of wide-ranging and critically-important issues, not the least of which involve the right to resell xDSL services and the entitlement to reciprocal compensation. As recognized by Commissioners Furchtgott-Roth and Tristani, "the broader issues related to the jurisdictional nature of ISP traffic . . . [are] of enormous importance to many businesses, industries and consumers today, and doubtlessly many more tomorrow."<sup>16</sup> Commissioners Furchtgott-Roth and Tristani have well articulated the concern of TRA and others that "sweeping statements about this agency's jurisdiction -- and even more importantly the logical application of that framework -- could have broad and even

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<sup>16</sup> MO&O, CC Docket No. 98-79, FCC 98-292 at Separate Statement of Commissioners Harold Furchtgott-Roth and Gloria Tristani, Dissenting in Part.

unintended implications for many state commission decisions . . . [and] major ramifications for incumbent LECs, CLECs state commissions, and consumers."<sup>17</sup>

TRA submits that because of the many unique attributes of the Internet, the Commission has great flexibility in assessing the jurisdictional character of Internet traffic; the Commission need not be bound by inapplicable precedents. TRA urges the Commission to use that flexibility to, to borrow from Commissioners Furchtgott-Roth and Tristani, "reach a well-reasoned solution, . . . that can withstand the inevitable judicial scrutiny and market reaction."<sup>18</sup> Such a result, in TRA's view, will require a sharing of responsibility with, and a deference to the policy concerns expressed by, state commissions. As the Commission is aware, nearly two dozen state commissions have determined that Internet access is jurisdictionally local in nature.<sup>19</sup> These rulings should not be countermanded on the basis of traditional jurisdictional tools which have little, if any, applicability to Internet traffic.

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<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> "CLECs Fear Spillover from FCC Ruling on DSL Tariffs," Communications Today (October 26, 1998). See, e.g., Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic, Case No. 97-C-1275 (NYPSC, Mar. 19, 1998) ("[C]all[s] to an ISP . . . are all local calls . . . billed at local rates and . . . treated as local calls for ARMIS Reporting and Separations."); Contractual Disputes About the Terms of an Interconnection Agreement Between Ameritech Wisconsin and TCG Milwaukee, Inc., 5837-TC-100 (WIPSC, May 13, 1998) ("[T]he Commission found that calls to an internet service provider are local traffic – not switched exchange access traffic . . ."); MCI Telecommunications Corporation Petition for Arbitration of Unresolved Issues for Interconnection Negotiations Between MCI and Bell Atlantic, Decision No. C96-1185, PUC Docket No. 96A-287T (WVPSC, Nov. 5, 1996).

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to grant the MCI Petition for Reconsideration and reconsider its conclusion that "GTOC Transmittal No. 1148 proposing to offer GTE DSL Solutions-ADSL Service, is an interstate access service subject to this Commission's jurisdiction."<sup>20</sup>

Respectfully submitted,

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MO&O, CC Docket No. 98-79, FCC 98-292 at ¶ 33.

## CERTIFICATE OF SERVICE

I, Evelyn Correa, do hereby certify that copies of the foregoing Comments were this 5th day of January, 1999, sent by United States First Class Mail, postage prepaid, to the following:


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